

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-121964-12

Date:

September 6, 2012

Legend

Parent =

Sub 1 =

Sub 2 =

Date A =

Date B =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated May 4, 2012, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file certain elections. Parent is requesting an extension of time to file statements under section 1.337(d)-2(c) of the Income Tax Regulations (together, the "Election") that were required to be filed with its consolidated Federal income tax return for the taxable year ended Date A. The material information submitted for consideration is summarized below.

Parent is the common parent of a consolidated group that included its indirect wholly-owned subsidiaries, Sub 1, and Sub 2. During the taxable year ended Date A, all the stock in Sub 1 and in Sub 2 became worthless under I.R.C. § 165(g)(3) and section 1.1502-80(c). Parent, however, failed to claim a worthless stock deduction on the consolidated group's tax return for such year. The Election under section 1.337(d)-2(c)(3) to recognize the loss with respect to the stock of Sub 1 and Sub 2 was required to be filed with or as part of Parent's timely filed return for its taxable year ended Date A. For various reasons, however, the Election was not filed. In Date B, Parent discovered the Election was not filed. Subsequently, this request, under section 301.9100-3, for an extension of time to file the Election, was submitted.

Section 1.337(d)-2(a)(1) provides a general rule that no deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

Section 1.337(d)-2(a)(2)(ii) provides that a disposition means any event in which gain or loss is recognized, in whole or in part.

Section 1.337(d)-2(c)(1) provides that section 1.337(d)-2(c) applies with respect to stock of a subsidiary only if a separate statement entitled "section 1.337(d)-2(c) statement" is included with the return in accordance with section 1.337(d)-2(c)(3).

Section 1.337(d)-2(c)(2) provides that loss is not disallowed under section 1.337(d)-2(a)(1) to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities).

Section 1.337(d)-2(c)(3) provides that the statement required under section 1.337(d)-2(c)(1) must be included with or as part of the taxpayer's return for the year of the disposition.

In general, section 1.337(d)-2 applies with respect to dispositions and deconsolidations on or after March 3, 2005, and before September 17, 2008. If loss is recognized because stock of a subsidiary became worthless, the disposition with respect to the stock is treated as occurring on the date the stock became worthless. Section 1.337(d)-2(g).

Section 1.1502-80(c) provides that stock of a member is not treated as worthless under section 165 before the stock is treated as disposed of under the principles of section 1.1502-19(c)(1)(iii).

Under section 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of section 301.9100-2. Requests for relief under section 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

In this case, the time for filing the Election is fixed by the regulations (i.e., section 1.337(d)-2(c)(3)). Therefore, the Commissioner has discretionary authority under section 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent establishes it acted reasonably and in good faith, the requirements of sections 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election.

The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See sections 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and representations that have been made, we conclude that Parent has established that it acted reasonably and in good faith, that the requirements sections 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government. Accordingly, we grant an extension of time under section 301.9100-3, until 75 days from the date on this letter, for Parent to file the Election. However, this letter does not extend the period of time described in section 6511 by which a taxpayer is required to file a claim for credit or refund of an overpayment of tax.

WITHIN 75 DAYS OF THE DATE ON THIS LETTER, Parent must amend its return for its taxable year that ended Date A to claim the worthless stock loss, and to include the statements described in section 1.337(d)-2(c). Parent must also attach a copy of this letter to the return and any other relevant return. Alternatively, in lieu of attaching a copy of this letter to the returns, taxpayers filing their returns electronically may attach a statement to the return that provides the date and control number of the letter ruling.

The above extension of time is conditioned on Parent's consolidated group's tax liability, if any, not being lower, in the aggregate, for all years to which the Election applies, than it would have been had the Election been timely made (taking into account the time value of money). No opinion is expressed as to Parent's consolidated group's tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax return(s) involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that Parent's consolidated group's liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether Parent qualifies substantively to make the Election. Specifically, no opinion is expressed regarding whether or when the stock in Sub 1 or Sub 2 became worthless or the proper amount of any resulting deduction. In addition, no opinion is expressed as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under section 301.9100-3, we relied on certain statements and representations made by the taxpayer and its representative. All the essential facts, however, must be verified. In addition, notwithstanding that an extension is granted under section 301.9100-3 to file the Election, penalties and interest that would otherwise apply, if any, continue to apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your first named authorized representatives.

Sincerely,

Ken Cohen
Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)